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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8 UNITED STATES OF AMERICA,)

9 Plaintiff,)

10 vs.)

11 DAVID ALLAN GARRETSON, *et al.*,)

12 Defendants.)
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Case No. 2:13-cr-029-APG-GWF

ORDER

14 This matter comes before the Court on Defendant David Garretson's ("Defendant") Motion
15 to Suppress (#49), filed on April 8, 2013. The Court scheduled a hearing on the Motion (#49) for
16 May 7, 2013. *See April 9, 2013 Minute Order, Doc. #52.* The Court reserved determination of
17 whether the hearing will be an evidentiary hearing until after Plaintiff responded to the Motion
18 (#49). *See id.* Plaintiff filed its Response (#56) on April 25, 2013. Having reviewed the Motion
19 (#49) and the Response (#56), the Court will conduct an evidentiary hearing to determine whether
20 officers violated the fourth amendment by entering Defendant's property through a side gate to gain
21 visual access to the home's interior through a back window. The Court will not conduct an
22 evidentiary hearing as regards allegedly misleading omissions from the subsequent search warrant
23 affidavit in violation of *Franks v. Delaware*, 438 U.S. 154 (1978). Accordingly,

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1 **IT IS HEREBY ORDERED** that, as regards the officers' entry onto Defendant's property
2 and subsequent observation inside the home through a back window, the hearing on May 7, 2013 at
3 9:00 AM on Defendant Garretson's Motion to Suppress (#49) shall be an evidentiary hearing.

4 DATED this 30th day of April, 2013.

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7 GEORGE FOLEY, JR.
8 United States Magistrate Judge
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